



UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
www.uspto.gov

AUG 28 2000

Paper No. 30

In re Application of :
Shalong Maa : DECISION ON PETITION
Application No. 08/833,342 :
Filed: April 4, 1997 :
For: Computer-Controlled Talking :
Figure Toy With Animated :
Features :

This is a decision on the petition filed on June 16, 2000 by which petitioner requests supervisory review of the examiner's final action dated May 15, 2000 (paper No. 22) and certain other relief as will appear below.

The petition is denied.

Petitioner requests that the undersigned review the facts as stated on pages 3-5 of the petition. In general, many of the "facts" that petitioner alleges are in reality petitioner's opinions of the correctness of the examiner's action on the merits of the patentability of the claims. The merits of the patentability of the claims of this application is a matter falling within the jurisdiction of the Board of Patent Appeals and Interferences (BPAI) pursuant to 35 U.S.C. 134 and 37 CFR 1.191. In fact, it is noted that petitioner has filed a notice of appeal (June 6, 2000, paper No. 24) and an appeal brief (June 6, 2000, paper No. 25). As these matters are issues falling within the jurisdiction of the BPAI, they are not within the jurisdiction of the undersigned by way of petition. See 37 CFR 1.181(a), first sentence.

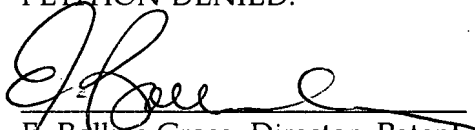
With respect to the facts by which petitioner alleges that the action of May 15, 2000 is incomplete in that it fails to address certain arguments raised by petitioner, (items 4.1 and 4.2 appearing on pages 2-4 of the petition), a review of the action leaves the undersigned with the firm conviction that the action is a complete and thorough reply to the substance of the request for reconsideration filed by petitioner on October 27, 1999 (paper No. 15). The examiner and Supervisory Patent Examiner promulgated an action comprising sixteen typewritten pages (beginning with page 2, the first page being a covering form), of which the pages numbered 6-16 comprise a detailed reply to the arguments presented by petitioner. That each specific argument made by petitioner is not addressed by listing it specifically with the identification numbering employed by petitioner does not mean that the action was fatally incomplete or defective. Indeed, a review shows that every position taken by petitioner was responded to, most in explicit terms in pages 6-16 of the action, and the remainder by implication within the statement of the rejection and supporting rationale therefore as set forth on pages 2-5 of the action. That petitioner does not agree with the rejections or the explicit statements on pages 6-16 of the action, as reflected in the filing of an appeal, does not make the action fatally incomplete or defective.

Finally, with respect to the delay in issuing the May 15, 2000 action, petitioner should note that six papers (paper Nos. 16-21) intervene between the request for reconsideration and the final

action. An examiner is obviously unable to act on an application when the application is not on the examiner's desk because it requires action on other papers, and/or because the other papers have to be associated with and entered into the application file. Further, petitioner should note that the preparation of the May 15, 2000 action obviously required a great deal of time, particularly in that approximately eight months elapsed between the examination which resulted in the Office letter dated August 2, 1999 and the availability of the application for the examination which resulted in the Office letter dated May 15, 2000. As an appeal and brief have now been filed, petitioner's application will certainly receive the appropriate priority treatment by the examiner and Supervisory Patent Examiner mandated by that status.

In summary, the petition presents no basis for granting any of the relief requested. Petitioner has the right to file a request for reconsideration of this decision, provided that the request for reconsideration is filed within two months of the date of this decision. See 37 CFR 1.181(f). The period for reply to the letter of informality dated July 26, 2000 (paper No. 28) is not stayed by the filing of the present petition, and continues to run as set in that letter .

PETITION DENIED.



E. Rollins-Cross, Director, Patent
Examining Groups 3710 and 3720

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